APR 11 1986 COMPLETED

Y 1.1/5: 99-272

Calendar No. 591

99TH CONGRESS 2d Session	SENATE	REPORT 99-272

ORIGINAL

FAIR EXPORT FINANCING ACT OF 1986

REPORT

OF THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 2246

together with

ADDITIONAL VIEWS

MARCH 26 (legislative day, MARCH 18), 1986.—Ordered to be printed

---

U.S. GOVERNMENT PRINTING OFFICE
71-010 O WASHINGTON : 1986

CD1

BEST COPY AVAILABLE

BEST COPY AVAILABLE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

JAKE GARN, Utah, *Chairman*

JOHN HEINZ, Pennsylvania
WILLIAM L. ARMSTRONG, Colorado
ALFONSE M. D'AMATO, New York
SLADE GORTON, Washington
MACK MATTINGLY, Georgia
CHIC HECHT, Nevada
PHIL GRAMM, Texas

WILLIAM PROXMIRE, Wisconsin
ALAN CRANSTON, California
DONALD W. RIEGLE, JR., Michigan
PAUL S. SARBANES, Maryland
CHRISTOPHER J. DODD, Connecticut
ALAN J. DIXON, Illinois
JIM SASSER, Tennessee

M. DANNY WALL, *Staff Director*
KENNETH A. MCLEAN, *Minority Staff Director*
JOHN WALSH, *Economist*
WAYNE A. ABERNATHY, *Economist*
PATRICK A. MULLOY, *Minority General Counsel*

CONTENTS

	Page
History of the legislation	1
Explanation of the provisions of the legislation	2
Budgetary impact	4
Congressional Budget Office cost estimate	4
Regulatory impact	5
Changes in existing law	5
Additional views of Senator Armstrong	6
Additional views of Senators Proxmire and Armstrong	7

BEST COPY AVAILABLE

Calendar No. 591

99TH CONGRESS
2d Session

SENATE

REPORT
99-272

FAIR EXPORT FINANCING ACT OF 1986

MARCH 26 (legislative day, MARCH 18), 1986.—Ordered to be printed

Mr. HEINZ, from the Committee on Banking, Housing, and Urban Affairs, submitted the following

REPORT

[To accompany S. 2246]

HISTORY OF THE LEGISLATION

Senators Heinz, Garn, Dixon, Danforth, and Chafee introduced on October 10, 1985, S. 1763, the Fair Export Financing Act of 1985. This legislation, proposed by the administration, would provide for a $300 million "warchest" to be used to combat tied aid credits, promoting progress in negotiations toward that end in the Organization for Economic Cooperation and Development [OECD].

Hearings on S. 1763 were held on October 30, 1985, before the Subcommittee on International Finance and Monetary Policy of the Committee on Banking, Housing, and Urban Affairs. Testimony was heard from William H. Draper III, President and Chairman of the Export-Import Bank; David C. Mulford, Assistant Secretary of the Treasury for International Affairs; Dr. Gary Hufbauer, Georgetown University; Dr. Fruzsina M. Harsanyi, Combustion Engineering, Inc. (representing the Coalition for Employment through Exports); Warren Hollinshead, Westinghouse Electric Corporation (representing the National Foreign Trade Council); and William D. Trammell, The Fluor Corp. (representing the International Engineering and Construction Industries Council).

The Committee met in open session on March 13, 1986. After adopting one amendment in the form of a substitute to S. 1763, the Committee without objection ordered the legislation favorably reported, as amended, in the form of an original bill.

BEST COPY AVAILABLE

EXPLANATION OF THE PROVISIONS OF THE LEGISLATION

The bill amends the Export-Import Bank Act of 1945, adding a new section 15, entitled "Tied Aid Credit Program", which establishes a $300 million tied aid "warchest" within the Treasury Department.

Findings

The bill contains findings that tied-aid or partially untied aid credits impede growth in developing countries and have market-distorting effects, which cause losses in U.S. export sales, employment, and economic growth.

The bill emphasizes that this facility is to be used until a comprehensive international arrangement, adequately restricting the use of tied aid and partially untied aid credits so that they can no longer be used for predatory commercial purposes, has been established.

The Committee does not condone the use of tied aid credits by any country, including the United States, in isolation. However, so long as other countries employ tied aid credits to gain an unfair advantage in international business competition the United States must counter these credits and bring foreign governments to the negotiating table.

The bill authorizes funding for two fiscal years only. At that time, if the purposes of the legislation have not been achieved, the Congress will need to review whether additional funding should be provided or additional steps need to be taken.

Purposes and use of fund

This fund is to be used to promote progress in the negotiation of a comprehensive international arrangement restricting the use of tied aid and partially untied aid credits for commercial purposes.

Within this broad objective the bill maximizes flexibility in the use of the fund. In the Committee's judgment the purpose of negotiating an effective agreement on tied aid credits calls for the aggressive use of this fund in a variety of ways, and flexible use of the fund is essential. For example, in some cases the Secretary of the Treasury may choose to match or even over-match tied aid offers likely to be provided to foreign suppliers by their governments. In other cases Treasury may use these funds to initiate a tied aid offer in markets or sectors that are present or potential markets for certain countries in an effort to promote progress toward an agreement to restrict the use of tied aid credits. This is to say that an effective strategy may include offensive as well as defensive tied aids offers to assist U.S. exporters in selling goods and services overseas.

Cooperation and information

The responsibility for administering funds under this section lies with the Secretary of the Treasury. However, no financing offer may be extended without the concurrence of the National Advisory Council on International Monetary and Financial Policies [NAC], to ensure that use of the fund takes into consideration broader U.S. trade promotion interests.

BEST COPY AVAILABLE

The provisions of the Trade and Development Enhancement Act require unanimous NAC approval of a mixed credit offer made pursuant to that authority. Only the concurrence of a majority of the NAC members is required for tied aid credits under provisions of this bill, in order to avoid a situation where aggressive use of the facility is frustrated due to the objection of a single agency.

In addition, the bill provides that the U.S. Trade Representative [USTR] and the Secretary of Commerce furnish the Treasury and the NAC with guidance on the principal sectors and markets where these tied aid offers might be extended, since USTR and Commerce have broad experience and information on these matters.

Elements of financing

The funds authorized in this bill may be combined with direct credits offered by Eximbank or with Eximbank-guaranteed or insured loans offered by private lenders. Also, the grants may be combined with loans extended by private entities with no Eximbank support.

The Committee also intends for Treasury to use these funds to reimburse Eximbank for the cost of tied aid credits that the Bank authorizes during fiscal year 1986. Since the decision of the President to combat predatory tied aid credits the Bank has been acting to support negotiations by using authorities existing in its charter to offer mixed credits—or highly concessional financing—in several target cases. Much more of this action by Eximbank can and should be done in order to produce movement in the OECD negotiations. It is highly appropriate that these Eximbank offers in fiscal year 1986 be supported by funds from this facility.

Authorization

This bill authorizes an appropriation of $300 million, available to be obligated in fiscal years 1986 and 1987. This amount is deemed sufficient to provide tied aid support to promote progress in negotiations. If that progress has been inadequate by the end of fiscal year 1987, Congress should seriously consider authorizing additional funds and taking additional steps. One witness who testified before the Committee suggested applying a tariff against imports from countries impeding progress in the negotiations. Such a measure may be appropriate if the current proposal yields insufficient progress in negotiations.

Regulations

The Secretary of the Treasury is authorized to issue regulations and take other actions that may be necessary to implement the legislation.

Non-reviewability

Actions taken by the Secretary of the Treasury, the NAC, and the Chairman of the Export-Import Bank are not subject to review by any court, except for the abuse of discretion.

Report

The Secretary of the Treasury is directed to provide a written report every 6 months to the President of the Senate and the

Speaker of the House of Representatives related to tied aid credit activity by the United States and other countries. Specifically, this report should address (1) the principal offers predatory financing by foreign countries during the previous 6 months; (2) steps taken by the United States to combat specific tied aid financing practices of other countries; (3) the use of the fund to match specific tied aid offers by other countries and to initiate tied aid offers; (4) additional steps being taken by the United States to discourage the use of tied aid credits; and (5) progress achieved through negotiations to restrict the use of tied aid and partially untied aid credits.

In instances of confidential information and to expedite reporting, portions of this report may be provided orally to the chairman and ranking minority members of the House and Senate committees having jurisdiction. The majority of the report, however, should be transmitted in writing.

BUDGETARY IMPACT

Analysis of Title II

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 20, 1986.

Hon. JAKE GARN,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate on the Fair Export Financing Act of 1986, as ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs on March 13, 1986.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Unassigned.
2. Bill title: Fair Export Financing Act of 1986.
3. Bill status: As ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs on March 13, 1986.
4. Bill purpose: The bill authorizes the appropriation of $300 million for a Competitive Tied Aid Program to be administered by the Secretary of Treasury.
5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
Authorization amount	300	0	0	0	0
Estimate outlays	16	56	64	40	24

The cost of this bill falls in budget function 150.

Basis for estimate: The estimate assumes enactment of this legislation before September, 1986 and subsequent appropriation of the amounts authorized in fiscal year 1987. Outlays were based on the President's request.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO cost estimate: The Congressional Budget Office has prepared cost estimates on the companion bill, H.R. 3667, as reported by the House Committee on Banking, Finance and Urban Affairs and the House Committee on Foreign Affairs.

9. Estimate prepared by: Joseph Whitehill.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

REGULATORY IMPACT

Pursuant to rule XXVI, paragraph 11(b), of the rules of the Senate, the Committee has evaluated the regulatory impact of the bill and concludes that it would have no impact on the regulatory burden of the Government.

CHANGES IN EXISTING LAW

The Committee has determined that it is necessary, in order to expedite the business of the Senate, to dispense with the requirements of rule XXVI, paragraph 12, of the rules of the Senate, with respect to this legislation.

ADDITIONAL VIEWS OF MR. ARMSTRONG

THE START OF A COSTLY AND UNNECESSARY PROGRAM

The Fair Export Practices Act is an unnecessary new Government program that is another "Band-aid" approach to foreign trade practices that injure American trade. This legislation provides a $300 million "war chest" to help U.S. firms fend off foreign competitors receiving subsidies from their governments. If this legislation passes, surely the following scenario will occur: The $300 million will be deemed insufficient to accomplish the legislation's goals, and Congress will increase the amount in future years. If it is not one of Murphy's laws it should be: once a government program begins, it only expands.

The purpose of this new program, as described in the bill, is to "eliminate foreign predatory export credit practices". "Predatory practices" are tied-aid credit arrangements that foreign governments use as financial incentives to attract private exporters. These foreign governments finance private business at least partly from public funds—thus providing them with substantial trade assistance. This "blending of financing" allows various combinations of official development assistance, official export assistance, and private commercial credit integrated into a single package to finance exports.

How do we plan to counteract these foreign trade practices? This bill creates our own tied-aid credit program on the theory that it will pressure other countries to discontinue their own programs. But what happens if, as I suspect, these countries expand their programs? Does the United States expand its program as well? And what happens if another foreign trade program is created that we find offensive? Do we legislate another one to match it?

If Congress adopts this legislation, it will not have created a war chest. It will have opened Pandora's Box.

WILLIAM L. ARMSTRONG.

BEST COPY AVAILABLE

ADDITIONAL VIEWS OF SENATORS PROXMIRE AND ARMSTRONG ON THE MIXED CREDIT WARCHEST LEGISLATION

I am opposed to the enactment of so-called warchest legislation which will authorize spending $300 million of our taxpayers' money over the next 2 years in order to subsidize the sale of $1 billion of American goods to developing countries. The announced purpose of this new spending program is to combat the use of mixed credits by other nations and thus to help eliminate this pernicious practice. This legislation will not achieve that purpose. It should not be enacted for several reasons not the least of which are:

1. There is no need for a new subsidy program. Foreign exports receiving mixed-credit subsidies represent only a minuscule portion of world trade—about three-tenths of 1 percent of U.S. exports according to the Congressional Research Service. Changes in the value of the dollar, induced by cutting back our budget deficit, would be a thousand times more effective than any new and costly export subsidy program, in helping our exporters.
2. The concept of making financial war on other countries who use mixed credits to fund exports by initiating our own program makes no sense as it will not result in the elimination of mixed credit programs used by foreign countries, but rather will cause their use to be expanded;
3. This program may start with $300 million for 2 years, but because it will not be successful, those benefiting from it will want it extended and expanded and it will just result in the establishment of a new entitlement program for U.S. exporters;
4. It makes no sense in these days of massive budget deficits, when so many domestic programs are being slashed, to start a new export subsidy program that will benefit foreign consumers at the expense of American taxpayers.

Let me elaborate on these points by noting that mixed credits, or tied-aid credits, are Government financing packages for exports that include a foreign-aid component. They combine official export credits with development assistance thus providing loans with blended interest rates to developing nations for the purchase of commercial items. These blended rate loans have much lower interest rates than normal commercial rate loans and the country offering them for the purchase of goods from its manufacturers is providing the buyer with a significant export subsidy. Countries offering tied-aid credits contend they are part of their foreign-aid programs and should not be considered to be export subsidies subject

BEST COPY AVAILABLE

to international agreements on limiting export subsidies. The U.S. disagrees and contends tied-aid credits should only be considered to be legitimate foreign aid if the grant element is at least 50 percent of the export value of the item sold.

It should be noted that the Reagan administration, like past administrations, has conducted negotiations with other developed nations under the auspices of the 22 nations Organization for Economic Cooperation and Development [OECD] to establish limits on official export credits—of which mixed credits are only one kind. In recent years U.S. negotiators have been successful in reaching agreements within the OECD to reduce the use of regular export credits by other governments. These culminated in a November 1983 agreement by OECD nations to reduce and in many cases eliminate regular export credit subsidies. In 1985 an agreement was also reached by OECD countries to virtually eliminate financial subsidies for nuclear power projects and purchases of large commercial aircraft.

With the reduction and elimination of regular export credit subsidies, mixed credits, used principally by France and Italy, and defended by them as a legitimate way to give foreign aid, have become the export subsidy issue about which U.S. companies complain the most. U.S. negotiators in the OECD have taken the position that the foreign aid component (the grant element) of a mixed credit deal must constitute a substantial part of the whole package before it can be deemed to be foreign aid. Otherwise, our negotiators argue, the mixed credit "foreign aid" is really a disguised export subsidy, and should be subject to international agreements limiting export subsidies.

The U.S. strategy in OECD negotiations has been to raise the grant element in mixed credits in order to make them too expensive to be anything other than a legitimate means of giving foreign aid, and not a disguised export subsidy. In 1982 U.S. negotiators succeeded in achieving agreement within the OECD to eliminate mixed credits with a grant element below 20 percent. In April 1985 they were able to reach agreement to raise the grant element to 25 percent. A mixed credit with a 25-percent grant element is becoming an increasingly expensive way to win export sales. Still the French and Italians have not been deterred from continuing their use. In an effort to make these credits too expensive for any sane government to use as a way of winning exports for their businesses, the U.S. has proposed in the OECD that the minimum grant element in mixed credits be raised to 50 percent. The Governments of France and Italy are the main users of mixed credits who have resisted such a proposal. They insist that mixed credits are a legitimate means of giving foreign aid and contend that raising the grant element to 50 percent would make their use prohibitive. That, of course is precisely the U.S. objective.

For years various U.S. companies have urged the U.S. Government to create a warchest to provide mixed-credit subsidies for their exports to developing countries as as means of combating those mixed-credit subsidies provided by other governments. It should be noted that the Congressional Research Service [CRS], in a November 1985 study on mixed credits, found that in 1984 mixed credits funded worldwide exports worth only $649 million and in

BEST COPY AVAILABLE

1985 through September exports worth only $494 million. The CRS study stated that "to put the problem of mixed credits in perspective, it is important to note that such transactions represent a small portion of world trade * * * only about three-tenths of 1 percent of total U.S. exports" in 1984 and 1985. That study further noted that mixed credits used by other nations did not contribute significantly to the U.S. trade deficit.

No doubt with such considerations in mind the Reagan administration, until September 23, 1985, consistently opposed various congressional initiatives to create a mixed-credit warchest. In a 1983 hearing on such a proposal Mr. William Morris, a Deputy Assistant Secretary of the Commerce Department, told the Banking Committee that "we cannot expect to eliminate the unfair initiation of mixed credits by engaging in this practice ourselves." Assistant Secretary Marc Leland, of the Treasury Department agreed. In February 1985 Mr. William Draper, then Chairman of the Export-Import Bank, was asked about the wisdom of creating a mixed-credit warchest. He told the Banking Committee that in his view "the most effective way to stem the use of aid funds for commercial purposes is not an all out mixed-credit war * * * Even if we had a big barrel of money for mixed credits, I don't think it would change the attitude of the various countries a bit * * *"

Why did the Reagan administration suddenly change its mind about the utility of building a warchest to do battle on mixed credits? In my view the September 1985 conversion came about because the administration saw its budget deficits and resulting misaligned exchange rates were severely damaging U.S. export industries. Rather than deal with that basic problem, the administration came up with a series of measures to head off various initiatives on trade under consideration in both Houses of the Congress. The mixed-credit warchest was presented as one of those measures. The administration, to its credit, realizing that the export community would attempt to expand and extend any new subsidy program, proposed the warchest as a limited, one time only, 2 year, $300 million program under the control of the Treasury Department. The administration proposed such warchest be used solely to provide mixed credits for sales to countries that traditionally purchased from France or Italy, the countries blocking an agreement on raising the grant element on mixed credits in OECD negotiations.

In sending his 1986 fiscal year budget to the Congress President Reagan warned that "every dollar of current Federal spending benefits someone. That person has a vested self-interest in seeing those benefits perpetuated and expanded". The process of perpetuating and expanding the mixed-credit warchest is already evidenced by changes the Banking Committee made in the warchest bill originally proposed by the administration. First there is no longer complete discretion in the administration to determine whether to spend the warchest money. Second the warchest can now be used against countries other than countries like France and Italy which are blocking an OECD agreement. Third, and most significant, the bill no longer has a provision ending the mixed-credit warchest program after 2 years.

On October 30, during a Banking Committee hearing on the warchest proposal, Assistant Secretary Mulford told the Committee he

was aware of the pressures there would be from exporters to turn the new program into an open-ended entitlement program. He said the administration bill had a 2-year sunset provision to keep that from happening. When Senator Heinz asked Mr. Mulford about the wisdom of the sunset provision the latter replied, "* * * we do not want to create something that gets out of hand, becomes an entitlement program * * * I think it is very helpful to have a sunset provision that forces a review, which would either retire the program, because it has been successful, or might take some different track, depending upon what the situation is at that time." Mr. Mulford's response makes eminent good sense. However it was rejected because the process of building a new entitlement program for exporters is already under way.

Even if the mixed-credit warchest proposal had a 2-year sunset provision, I would be opposed to its enactment because it is based on a faulty premise. The alleged purpose of the new mixed-credit warchest legislation is to have our Government use expensive mixed-credit subsidies to help U.S. companies win sales away from French and Italian exporters. The theory is that those foreign exporters will then go to their governments and lobby them to negotiate an end to the practice of mixed credit subsidies. A more likely outcome, in my view, is that foreign companies damaged by our mixed-credit subsidies will prevail on their governments to increase their own subsidies. In that case U.S. exporters will in 2 years be demanding that the $300 million mixed credit warchest be continued and expanded in order to win an intensified mixed-credit war.

I may be wrong—maybe this fighting fire with fire approach will be successful. I think, however, the proponents of such an approach owe it to our taxpayers to evaluate the success of their effort in 2 years. Knowing full well the pressures we will be under to perpetuate and expand the program in 2 years, even if it is not successful in achieving its purpose, I offered an amendment to reinstate a 2-year sunset provision at the Banking Committee markup on this bill. It did not pass. I am absolutely convinced that if Congress wants to start this program, which will not achieve its purpose in my view, we should put a sunset provision in the bill so we do not establish a new open-ended entitlement program that our taxpayers will have to fund long after its original purpose is forgotten.

WILLIAM PROXMIRE.
WILLIAM L. ARMSTRONG.

BEST COPY AVAILABLE